THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.3392 OF 2003

Dated: 7th September, 2006.

Between :

Port of Kakinada Harbour Crafts Pool (Regd. No.185/81)
Rep. by its Secretary, Kakinada. … Petitioner

And

1. State of Andhra Pradesh, rep. by its Secretary, Transport, Roads & Buildings Department, Secretariat Buildings, Hyderabad, and 2 others. .. Respondents

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WRIT PETITION NO.3392 OF 2003

ORDER :

The writ petitioner claims to be a society formed by the persons operating barges for transportation of cargo from shore to ship and vice versa in Kakinada Port. It is stated that the members of the petitioner society are owning 92 steel barges and they have been handling the transportation of cargo for the last more than 50 years. Initially, they were operating wooden boats. When the respondents sought to replace the wooden boats with steel barges and thus started allowing third parties to carry on the transportation work, the petitioner society filed W.P.No.3784 of 1996. The said writ petition was disposed of by this Court by order dated 25-7-1996 with directions as under :

> *"(1) That the respondent/port authorities shall ascertain the requirement of steel barges so as to ensure that the owners receive remunerative return on investment and thereafter issue notice to al the boat owners asking them to give their willingness to place the steel barges within a definite period. After receipt of the application from the boat owners the port authorities shall consider the same and take appropriate decision in the matter.*
>
> *(2) It is also desirable that the port authorities should assist the petitioners both in technical guidance and also in obtaining necessary finances from the financial institutions.*
>
> *(3) Until the decision is taken in this regard by the respondents, the existing boat owners shall be permitted to operate their boats in the port area and the outside*

persons shall not be allowed to operate steel barges.

(4) If any licences have already been granted to outsiders and if they are operating steel barges they shall not be disturbed."

Subsequently, on a review petition filed by one M/s. Ocean Sparkle Private Limited, the matter was reconsidered and while confirming the order dated 25-7-1996, certain further directions were issued as under :

"(1) Respondent Nos. 1 to 3 shall permit the 4th respondent to operate nine second-hand steel barges on or before 15th October, 1996 subject to fulfillment of other statutory requirements. If the 4th respondent fails to comply with this direction within the time stipulated above, the permission granted by the port authorities to operate the barges shall be deemed to have been cancelled except to the extent of those barges which would be placed before 15.10.1996. Direction No.4 in para 9 of the order dated 25-7-1996 shall be deemed to have been modified accordingly.

(2) In future, the Respondent Nos.1 to 3 shall not permit the outsiders either to acquire the second-hand barges or construct new steel barges without following the procedure mentioned in Clause No.3.

(3) The requirement of barges will be assessed by the port authorities from time to time and thereafter they shall offer to the existing cargo boat owners to construct or acquire second-hand steel barges within the stipulated time. The boat owners shall give firm commitment in this regard. If they fail to accept the offer then it is open for the port authorities to invite the outsiders to operate the steel or other special type of barges. However, it shall be ensured that such an arrangement shall not have the effect of creating monopoly of operation in the port area."

Against the said order dated 12-9-1996, the writ petitioners filed an appeal being W.A.No.1174 of 1996. The Division Bench, by judgment, dated 4-11-1996, disposed of the appeal modifying the order in the writ petition as under :

"……the old operators shall be permitted to continue

their respective operations for a period of six months, by which period they shall replace their wooden barges by the steel barges of approved standard and in case such replacement is not done, the respondent authorities shall be free to cancel licence/refuse permission for operating wooden barges. The official respondents shall take up review of the licence/permission granted to the petitioner-respondent to introduce old steel barges and decide specifically on the seaworthiness, for the above purpose, of such barges and seek replacement by such time which, according to them, is safe for operation of such old steel barges and while doing so, keep in view the public interest and the interests of the nation in mind."

Aggrieved by the same, the petitioner society filed Civil Appeal No.5512 of 1997 in the Supreme Court of India which was disposed of by order dated 11-8-1997 holding that the direction of the Division Bench that the old operators shall be permitted to continue their respective operations for a period of six months does not appear to be proper in the facts of the case. Accordingly, the Supreme Court ordered as under :

"So long as the appellants continue to hold the licences they are entitled to operate their barges. It is for the licensing authority to decide whether the licences will be cancelled or extended or revoked in accordance with law.

It is clarified that not only the appellants but whosoever applied for a licence will be dealt with in accordance with law by the licensing authority. The appeal is disposed of."

While so, the present writ petition is filed alleging that the respondents have been deliberately trying to induct outsiders to carry on operations by according permission for construction and operation of steel barges in utter disregard to the directions of this Court in W.P.No.3784 of 1996. It is contended that such action of the respondents without making any assessment as to the real requirement of number of barges at the port is arbitrary and illegal. It

is also pleaded that the existing owners who are operating steel barges are not getting remunerative returns and the respondents who are bound to ensure remunerative returns on investment made by the existing boat owners cannot grant permission to outsiders for construction and operation of new barges.

This Court while directing Rule Nisi, by order, dated 17-3-2003, granted interim direction not to take any unilateral decision effecting the petitioner's interest in the matter of allowing construction and operation of steel barges by outsiders.

The Port Officer, Kakinada, the 3rd respondent filed a counter-affidavit denying the allegation made by the petitioner that the existing infrastructure in the port is insufficient. It is explained that during the year 2002-03, a record quantum of 23,90,715.998 M.Tonnes of cargo was handled and the steel barge owners as also the workers received remunerative returns. As the cost for construction of steel barges run into lakhs of rupees, only such owners who are capable of investing such huge amounts would come forward to construct and operate steel barges but not on the requirement criteria. There is ample space for parking barges along the Northern bank of commercial canal where more than 150 steel barges can be safely moored without obstruction. Thus, it is contended that the writ petition is misconceived and it is nothing but an attempt to create monopoly of operation at the port.

I have heard the learned Counsel for both the parties and perused the material on record.

It is to be noted that in exercise of the powers conferred by Section 6 (1) (k) of the Indian Ports Act, 1908, the Governor of A.P. made Rules vide G.O.Ms.No.1, Transport, Roads & Buildings (Ports) Department, dated 3-1-1981. The said Rules called A.P. State Ports Harbour Craft Rules, 1980 are made applicable to all ports in the State of Andhra Pradesh except the major port of Visakhapatnam. Rule 4 of the said Rules provides that no person shall whether as owner or as a servant use any harbour craft for fishing or to carry goods or

passengers to or from any ship or vessel at any port or from place to place within the limits of any port unless such person holds licence granted by the registering officer and unless the harbour craft so used has been registered. Sub-rule (2) of Rule 4 of the Rules further made it clear that the registering officer before granting such licence shall cause the harbour craft surveyed and measured in the presence of the owner and shall be satisfied that it is seaworthy and fit for service at the port.

There is no provision under the Rules which requires that the licensing authority shall ensure remunerative returns to barge owners and therefore ascertain the requirement of the barges in the port.

As noted above, the only requirement prescribed under the Rules is the licence granted by the registering officer after being satisfied about the seaworthiness of the craft.

It is to be noted that W.P.No.3784 of 1996 was filed by the petitioner society when the respondents sought to replace the wooden boats possessed by the members of the petitioner society with steel barges. The contention raised was that since they were operating the wooden boats for the past several years, without giving any notice to them for replacement of the wooden barges with that of steel barges, the respondents were not justified in permitting the outsiders to operate the steel barges. In that context, this Court, having regard to the facts and circumstances of the case, while observing that in order to ensure that the existing boat owners were not thrown out of their livelihood, they should be afforded an opportunity to replace their wooden barges with that of steel barges, directed that the port authorities shall ascertain the requirement of steel barges and till such time the outside persons shall not be allowed to operate steel barges.

As noted above, ultimately, the matter went upto the Supreme Court and in C.A. No.5512 of 1997 the Supreme Court while leaving it open to the licensing authority to decide whether the licences will be cancelled or extended or revoked in accordance with law made it clear

that not only the appellants (the petitioner herein) but whosoever applied will be dealt with in accordance with law by the licensing authority.

Thus, it is always open to the licensing authority to consider the issue relating to grant of licences in accordance with the provisions of A.P. State Ports Harbour Craft Rules, 1980.

The contention of the petitioner that no fresh licences can be granted without assessing the requirement of number of barges at the port is untenable and not supported by any statutory provision. The learned Counsel for the petitioner could not point out any such provision under the statutory rules, but only relied upon the directions of this Court dated 25-7-1996 in W.P.No.3784 of 1996.

As already expressed above, the context in which the said directions were issued was entirely different and therefore the contention of the petitioner that prior assessment of the requirement at the port is a pre-condition for grant of licences is untenable and without any substance.

Accordingly, the Writ Petition is dismissed making it clear that it is open to the respondents to consider the request for fresh licences in accordance with law. No costs.

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G. ROHINI, J.

Dt. 7-9-2006

gbs

Note:- CC in 3 days.